IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2831 OF 2004

M/s. Dinal Diamonds .. Petitioner

v/s.

Commissioner of Income-tax XVI,
Mumbai & ors. .. Respondents

Ms.Arati Vissanji with Mr.S.J. Mehta for petitioner.

Mr.B.M.Chatterjee with Mr.R.Asokan for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 22nd November, 2004

P.C.

Heard.

2. Rule. Returnable forthwith.

3. The advocate on record for the revenue waives service.

4. Rule is treated on board for final hearing at this stage.

5. Having considered the available material and all the aspects, we are of the view that the application made by the petitioner seeking extension under section 80HHC (2)(a) of the Income Tax Act, 1961 for realisation of outstanding export proceeds requires reconsideration by the Commissioner of Income Tax, Mumbai City XVI,

Mumbai. It is so because it is apparent from the particulars available on record that the payment has been received, though belatedly, from the concerned parties. The petitioner in the application seeking extension under section 80HHC (2)(a) for realisation of outstanding export proceeds set out the grounds that (i) The South East Asian and Japanese Currency crisis, in its aftermath has resulted in erosion of fortunes leading to widespread defaults by businessmen there. In turn the jewellery and diamond trade across the world is unable to realize its dues and/or is saddled with goods returned by parties and faces a tremendous payment crisis; (ii) Worldwide recession and general slackness in the demand for jewellery (and percolating to diamonds) for the last two and a half years); (iii) Slow moving stocks piled over with customers abroad; (iv) Difficulty in realization of sale proceeds by customers abroad. (v) Reduction in bank credit finance the world over. (vi) Uncertain economic environment caused by general trade depression in most of the diamond consuming countries. The Commissioner seems to have overstretched the matter by observing that the assessee ought to have established with evidence that he was unable to bring the convertible foreign exchange for the reasons beyond control. The assessee's grounds set out above suggest that it was beyond his control.

We are of the view that the matter requires reconsideration by the Commissioner.

6. We, accordingly, set aside the order dated 15th March, 2004 impugned in the present writ petition and direct the Commissioner of Income Tax, Mumbai City XVI, Mumbai to reconsider the petitioner's application dated 10.12.1998 seeking extension under section 80HHC (2)(a) in accordance with law.

7. Rule is made absolute in the aforesaid terms.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)